

United States District Court,
Western District of Washington

Lance P. McDermott
Plaintiff, *Pro Se*,

vs.

U.S. Postal Service (USPS),
Postmaster General, Megan Brennan, *Et*
Al;

and
Greater Seattle Area Local (GSAL),
American Postal Workers Union
(APWU), AFL-CIO, President, Myrna
Umali; *Et Al*, Salaried Union Officials.
and

Defendants.

Case No. **16 CV-00377**

) Complaint of Constitutional, Statutory,
) and State Law violations.

) Noted for Consideration on 2015

FILED ENTERED
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MAR 14 2016 DJ

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

This is a hybrid action against the Agency and the Union brought under Title VII of the Civil Rights Act (CRA) of 1964, 42 U.S.C. § 2000e-16 and the CRA of 1991, Title I, Section 1977A(a)(1) that provides the right of review – “In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-5 and 2000e-16) against a respondent who engaged in unlawful intentional discrimination prohibited under section 703, 704, or 717 of the Act [42 U.S.C.A. §§ 2000e-2, 2000e-3, or 2000e-16].”

The Court has original jurisdiction by virtue of 28 U.S.C. § 1331 (the General Federal Question Statute), 28 U.S. Code § 1339 - Postal matters, Declaratory Judgment 28 U.S.C. § 2201 - for the injunctive relief, 28 U.S. Code § 1357 - Injuries under Federal laws, 28 U.S.C. 1361 mandamus statute, and 28 U.S. Code

1 § 1343(1) - deprivation of any right or privilege of a citizen of the United States,
2 by any act done in furtherance of any conspiracy mentioned in section 1985 of
3 Title 42(1) "Preventing officer from performing duties."

4
5 With original jurisdiction of the violations for the Title VII of the Civil Rights I
6 ask the Court to grant its supplemental jurisdiction, 28 U.S. Code § 1367, over
7 Constitutional, 28 U.S.C. § 2679(b)(2)(A), Statutory, 28 U.S.C. § 2679(b)(2)(B)
8 and State Law violation claims.

9
10 I also ask for the Court's supplemental jurisdiction over hybrid claims brought
11 against Union Officials (28 U.S.C. § 2671, Employee of the Government) of the
12 Greater Seattle Area Local (GSAL) American Postal Workers Union (APWU).
13 For self-enrichment of Union Officer from the Union Trust Funds. 39 U.S.C.
14 § 1208(b) allows - "Any labor organization may sue or be sued as an entity and in
15 behalf of the employees whom it represents in the courts of the United States."
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20 I seek the Court's *De Nova* review and Decision of:

21
22 1. Title VII Age Discrimination – Violation of the Age Discrimination in
23 Employment Act (ADEA), 29 U.S.C. §§ 631, 633a©, *Bowman v. Department of*
24 *Agriculture*, 113 M.S.P.R. 214 113 M.S.P.R. 214 (2010). Made under the ADEA
25 and Civil Rights Act, *Davis v. Department of the Interior*, 14 M.S.P.R. 527 114

1 M.S.P.R. 527 (2010). Filed within the ADEA three year limit for a willful
2 violations, 29 U.S.C. § 255.

3 Regional Code of Washington (RCW) 49.60.180(2), - "To discharge or bar any
4 person from employment because of age or physical disability." RCW 49.44.090,
5 -"Unfair practices in employment because of age of employee."
6

7
8 (1) I am 56 years of age (born 1959).

9 (2) I was placed on unpaid Enforced Leave and younger employees Scott
10 Myhrwell and Manny Castillo (less qualified) where brought in to do my work. (A
11 "Sufficiently younger person," *Tomasso v. Boeing Co.*, 445 F.3d 702, 706n. 4
12 (3dCir.2006).)
13

14
15 (3) The Agency tried to deprive me of my [old age] benefits.

16 18 April 2013 (MSPB SF-0752-13--0633-B-1 exhibit 106), Email MM Norris
17 to Denver (?) Henderson, - "...No where in his files anywhere has such a
18 disclosure been made before..." 19 April 2013, Email SMO Dow to MMO
19 Marzec, - "I did not realize that if an employee lies on his application and that
20 once it was discovered that employee would be removed from the postal service
21 and no benefits would be paid." MMO Marzec, - "What are you talking about?
22 What lie? Is there proof?" SMO Dow, - "He did not state that he was colored
23
24
25

1 blind or could not distinguish colors when he applied for work with the Postal
2 Service.”

3 SMO Dow created and gave me the first “notice” (after my stress leave and
4 Federal Law Enforcement action), 8 April 2013 (MSPB -0633-I-1 agency exhibit
5 6) being place on enforced leave because of my handicap.

7
8 MMO Marzec (created?) gave me the second “notice” of Enforced Leave, 8
9 May 2013 (MSPB agency exhibit 7).

10
11 30 May 2013 (MSPB agency exhibit 8), That lead to me being placed on
12 “Enforced Leave” by Maintenance Manager (MM) James Norris knowing issued
13 without an Agency policy or process for doing so.

14
15 (4) The 9-months of unpaid Enforced Leave deprived me of:

16 (a) 9-months of pay towards my [old age] retirement.

17
18 (b) I will have to work an extra 9-months before retiring.

19 © I lost 960-hours of saved leave that I could have sold back on
20 retirement.

21
22 (d) I will have to work another 5 years (without taking leave) to earn 960-
23 hours back before retiring.
24
25

1 ADEA 29 U.S.C. § 631(a) indirect evidence – (1) born in 1959, (2) I met my
 2 employer’s “legitimate performance expectations” for 17 years, (3) I suffered
 3 adverse action – unpaid Enforced Leave, (4) younger employees were given my
 4 work, and (5) no other over-forty years of age employee has suffered enforced
 5 leave. *McDonnell Douglas Corp. v. Green*, 441 U.S. 792, 802, 99 S.Ct. 2400, 60
 6 L.Ed.2d 646 (1973). *Ueon C. BAK, v. USPS*, No. 93-56249, (9th Cir. 7 April
 7 1995). *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000). In *Gomez-Perez v.*
 8 *Potter*, (No. 06-1321), 553 U.S. 474 (2008), 29 U. S. C. §633a(a).
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13 2. Title VII Disability discrimination – violations of the Rehabilitation Act, 29
 14 U.S.C. § 791, with standard of review under Title I Americans with Disabilities
 15 Act (ADA) (42 U.S.C. 12101 et seq.), 42 U.S.C. § 12132. By asking for medical
 16 documents for my perceived (42 U.S.C. 12102(1)©) disability – color blindness,
 17 violated, 42 U.S.C. 12112(b), - “Discrimination against a qualified individual on
 18 the basis of disability, includes ... (d)(1)...shall include medical examinations and
 19 inquires.... (4)(A) A covered entity shall not require a medical examination...”
 20
 21

22 42 U.S. Code § 12112 ©(4)(A) Prohibited examinations and inquiries – “A
 23 covered entity shall not require a medical examination and shall not make
 24
 25

1 inquiries of an employee as to whether such employee is an individual with a
2 disability or as to the nature or severity of the disability...”

3 Washington State RCW 49.60.180(2), - “...physical disability.” RCW
4 70.84.080, Employment of handicapped persons – “unless it is shown that the
5 particular disability prevents the performance of the work involved.”
6

7 42 U.S.C. § 2000e-3(a), - “An employer makes an adverse employment decision
8 “solely” because of an employee’s disability [color blindness]... has no reason left
9 to rely on to justify its decision...” - *Verkade v. USPS*, 378 Fed.Appx. 567, 578
10 (6th Cir. 2010).
11

12 42 U.S.C. § 12112(a) claim: I had a handicap – genetic birth defect of partial
13 color blindness, that my employer perceived as a disability; (2) I was qualified to
14 perform the essential functions of my job without accommodation by an Agency
15 Doctor (OPF, PS Form 2484, Medical Examination, 24 October 1996); (3) my
16 employer took an adverse employment action – unpaid enforced leave, because of
17 the alleged disability. See *Colon-Fontanez v. Municipality of San Juan*, 660 F.3d
18 17, 32 (1st Cir. 2011).
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21

22 EEO #1E-985-0005-13 Investigative Affidavit of Supervisor of Maintenance
23 Operations (SMO) Ken Dow (EEO Investigative Report page 0770 Affidavit B,
24 page 43), Question 46, - “Mr. McDermott alleges you gave him a letter dated April
25

1 8, 2013, that warned that him could be placed in an, 'enforced leave status' and
2 demanded that he participate in the 'District Reasonable Accommodation
3 Committee (DRAC). Did you give him such a letter? If so, explain the reasons
4 for warning him..." Answer #46, - "He was given the letter because his is color
5 blind and for his safety and the post office."
6

7 I was considered disabled under 29 C.F.R. § 1630.2(g).
8

9 I was "qualified" to perform the "essential functions of the job in question with
10 or without reasonable accommodation." 29 C.F.R. § 1630.2(m).
11

12 Section 501 of the Rehabilitation Act standard proof: (1) When I was prevented
13 from working because of my handicap I became disabled within the meaning of
14 the statute; (2) I otherwise qualified for the position; (3) I was adversely treated
15 because of my disability; and (4) I worked for the federal government." *Boyd v.*
16 *U.S. Postal Service*, 752 F.2d 410, 413 (9th Cir.1985); see also, *Johnson v. U.S.*
17 *Postal Service*, 861 F.2d 1475, 1478 (10th Cir. 1988). (See Statement of Facts.)
18
19

20 I seek Make-Whole remedies and damages.
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23 3. Title VII Hostile Work Environment – harassment and retaliation in response
24 to protected activity. See *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000)
25

1 (“A postal employee may bring suit under § 2000e-3(a)16 pursuant to 42 U.S.C. §
2 2000e-16. See *Ayon v. Sampson*, 547 F.2d 446, 450 (9th Cir.1976).

3 Hostile Work Environment - The hostile work environment claim that has been
4 recognized under the ADA is “modeled after the similar claim under Title VII [of
5 the Civil Rights Act of 1964].” *Flowers v. Southern Regional Physician Serv.*, 247
6 F.3d 229, 233 (5th Cir. 2001) at 235. Allegations of HWE reprisal “based upon
7 exercising one’s right to complain” are protected under 5 U.S.C. § 2302(b)(9),
8 while those that are “based on disclosure of information,” (5 C.F.R.
9 § 1201.56(c)(2), *disclosure*) are protected under 5 U.S.C. § 2302(b)(8). *Serrao v.*
10 *Merit Systems Protection Board*, 95 F.3d 1569, 1574-75 (Fed. Cir. 1996); *Luecht*
11 *v. Department of Navy*, 87 M.S.P.R. 297, ¶ 9 (2000). Noting that claims for
12 improper disability-related inquiries or retaliation may be brought under 42 U.S.C.
13 12112(b)(4), *Cossette v. Minnesota Power & Light*, 188 F.3d 964, 969-70
14 (8th Cir.1999).

15 The Ninth Circuit recognizes federal employee claims of retaliation in response
16 to making a claim of discrimination. See *Ray v. Henderson*, 217 F.3d 1234, 1240
17 (9th Cir. 2000) (“A postal employee may bring suit under § 2000e-3(a)16 pursuant
18 to 42 U.S.C. § 2000e-16. See *Ayon v. Sampson*, 547 F.2d 446, 450 (9th Cir.1976)
19 [‘We conclude that in enacting § 2000e-16, Congress intended to, and did
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1 incorporate into that section the provisions of the Civil Rights Act prohibiting
2 harassment or retaliation for the exercise of those remedial rights established by
3 the Act.']. The term “discriminate” the meaning used in Title VII cases for
4 harassment: a materially adverse employment action. Materially adverse: “which
5 in this context means it well might have dissuaded a reasonable worker from
6 making or supporting a charge of discrimination.” *Rochon v. Gonzales*, 438 F.3d
7 1211, 1219 (D.C. Cir. 2006).

8
9
10 A hostile work environment occurs “[w]hen the workplace is permeated with
11 discriminatory intimidation, ridicule, and insult that is sufficiently severe or
12 pervasive to alter the conditions of the victim's employment and create an abusive
13 working environment.” *Bowman v. Shawnee State University*, 220 F.3d 456, 463
14 (6th Cir. 2000).)

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16
17 I participated in a protected activity – HWE Investigation December 2012
18 (MSPB 27). The Management knew I stated during the HWE Initial Management
19 Inquiry Process (IMIP) investigation’s Interview, 3 December 2012 (MSPB
20 exhibit 27), - “...the supervisor know I am color blind.”

21
22 Email of HWE IMIP reviewing official LR Dan Foster, 3 February 2013 (MSPB
23 exhibit 96), - “I read the IMIP file...Regarding his claim to be color blind. I
24
25

1 suggest that you instruct him to perform the task and that he would have to bring
2 in medical evidence to show he has the defect...”

3 Email OHS Nurse Daniels to, MM Norris, LR Foster, 7 February 2013 (MSPB
4 exhibit 96), - “Jim, A few thoughts about Mr. McDermott and color blindness: ...
5 Has his work performance been acceptable? - Minimally but yes performance has
6 not been a issue... We may be able to keep him in his job but he would have to be
7
8 excluded from doing any electrical work...”
9

10 After complaining about a HWE, I suffered numerous discrete acts and
11 adverse actions. There is a causal connection between the protected activity and
12 the adverse employment actions. *Jute v. Hamilton Sundstrand Corp.*, 420 F.3d
13 166, 173 (2d Cir. 2005).
14

15 HWE reprisal “based upon exercising one’s right to complain” are protected
16 under 5 U.S.C. § 2302(b)(9), while those that are “based on disclosure of
17 information,” (5 C.F.R. § 1201.56(c)(2), *disclosure*) are protected under 5 U.S.C.
18 § 2302(b)(8).
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23 4. Whistleblower Protection Act of 1989 (“WPA”), 5 U.S.C. § 1201 and
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1 Notification and Federal Employee Antidiscrimination and Retaliation Act of
2 2002, (NoFEAR), 29 U.S.C. 206(d), 631, 633a, 791, 42 U.S.C. 2000e-16.

3 12. Whistleblower reprisal (Handbook ELM 666.38) complaints may be made
4 during the appeal process for adverse actions (ELM 652.23) defined by ELM
5 669k. (S. Rep. No. 100-413, at 6-16 (1988) and Federal Employee Protection of
6 Disclosures Act, S. 274, 16 November 2007)
7

8
9 Federal Register/Vol. 72, No. 14/Tuesday, January 23, 2007, Postal Service, No
10 Fear Act Notice, - "The Notification and Federal Employee Antidiscrimination
11 and Retaliation Act of 2002 (No FEAR Act) requires each Federal agency...
12 Retaliation against an employee or applicant for making whistleblower protected
13 disclosures is prohibited by ELM 666.18..."
14

15
16 That an employee could reasonably conclude that the actions of the government
17 evidence wrongdoing as defined by the WPA. See *Downing v. Department of*
18 *Labor*, 98 M.S.P.R. 64, 69-70 (2004). With an Individual Right of Action appeal
19 pursuant to the Whistleblower Protection Act. 5 U.S.C. § 1221(a). 5 U.S.C. §
20 2302(a)(2)(A); 5 C.F.R. § 1209.4(a). If an employee's disclosure adds "additional
21 information necessary to recognize" the nature or seriousness of a publicly known
22 problem, and this is information the public would not have otherwise had, then the
23 disclosure is protected under the WPA. *Wadhwa v. Department of Veterans*
24
25

1 *Affairs*, 110 M.S.P.R. 615, ¶ 9 (2009). See (for the Postmaster General & Judicial
2 Officer), NEEOISO Manager William Caldwell's "response," 25 April 2013
3 (exhibit N2, - "EEOC regulations do not provide for the consideration of criminal
4 matters...")

5
6 a. Allegations of violations of 5 U.S.C. § 2302(b)(2) (protected activity and
7 disclosures) and related provisions of law can sometimes constitute
8 whistleblowing. See *McDonnell v. Department of Agriculture*, 108 M.S.P.R. ¶¶ 9-
9 13 (2008); see also *Baldwin v. Department of Veterans Affairs*, 113 M.S.P.R. 469
10 (2010). Given that Postal Service employees may raise whistleblower claims in
11 conjunction with an otherwise appealable actions. See *Mack v. U.S.P.S.*, 48
12 M.S.P.R. 617, 620 (1991). Where the Board has found that Postal Employees may
13 raise a whistleblower defense pursuant to section 7701(c)(2)(B) because "[b]y the
14 plain terms of § 7701 all employees who have the right to appeal must have the
15 same rights." 10 M.S.P.R. 45, 48 (1982). *Butler v. U.S. Postal Service*, 10
16 M.S.P.R. 45, 48 (1982).

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21 Agency Handbook Employee and Labor Relations Manual (ELM) 665.23,
22 666.12. 5 U.S.C. § 2302(b)(8), which evidence a "(i) violation of any law, rule, or
23 regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of
24
25

1 authority or a substantial and specific danger to public health and safety.” 5 U.S.C.
2 § 2302 (b)(8)(A); 5 U.S.C. § 1213(a), and 5 U.S.C. §§ 1221(a).

3 b. The Whistleblower Section 11(c) of the *Occupational Safety and Health*
4 *Act of 1970* (OSH Act) prohibits retaliation against employees for filing a
5 complaint with OSHA or raising a health and safety concern with their employers.
6 I have filed OHEA complaints and had raised safety concerns that the Kent Wa.
7 Priority Mail Annex (PMA) facility does not had the Public Buildings Act and
8 Agency Regulations required HVAC system for the health and safety of all
9 employees (and myself) suffering insects bites and other injuries from the
10 “unbearable” hot and cold working conditions.
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14 My individual and class claims that the closure and destruction of the SeaTac
15 Post Office and Air Mail Center Facility (owned Public Property) was unlawful
16 (fraud) because it was not excess to the needs of the Postal Service (or Public)
17 since the Agency is leasing other facilities at a greater cost (waste) to the Public
18 (Taxpayer suit) paying the higher costs (abuse) of leasing (the PMA a facility
19 without HVAC) and the added equity of the Public Property (access) lost creating
20 a – Public Nuisance (mis-management).
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1 With regard to premises liability specifically, Washington has adopted the
2 Restatement (Second) of Torts sections 343 and 343A (1965). Section 343
3 provides liability:
4

5 (1) "Exercise of reasonable care to discover the condition, and should realize
6 that it involves an unreasonable risk of harm to such invitees, and..."
7

8 The number one reported on-the-job injury in the Kent PMA is insect bites.
9 June 2013 Safety and Health Inspection Report #8"Mail Processing: Bug Zappers
10 are not plugged in, mosquitos are biting." "The defendant had actual or
11 constructive notice of the unsafe and unhealthy conditions." - *Gonzalez v. Wal-*
12 *Mart Stores, Inc.*, 299 F. Supp. 2d 188, 192 (S.D.N.Y. 2004) (citing *Taylor v.*
13 *United States*, 121 F.3d 86, 89-90 (2d Cir. 1997)). And, the Employer knows that
14 West Nile and Zika viruses are also threatening employee's health and safety.
15
16

17 (2) "should expect that they will not discover or realize the danger, or will
18 fail to protect themselves against it, and;" (Employer Knowledge – Grievance
19 MNT 49-10, 21 July 2010 (exhibit Q1), - "... forcing employees to work in
20 unbearable working conditions..." – Steward Brenda Burke.
21

22 (3) "Fails to exercise reasonable care to protect them against the danger."
23
24 In fact a HVAC was ordered in response to the grievance, 11/11/2011 and
25 cancelled 04/09/2012 (USPS Facilities Management System Status Report).

1 Washington State WISHA regulations create a duty toward employees
2 performing work on the property. *Baerlein v. State*, 92 Wash. 2d 229, 232, 595
3 P.2d 930,932 (1979). (1) My protected activity and disclosures were protected
4 under the WPA and (2) those disclosures were a contributing factor to the
5 Enforced Leave. See *Schaeffer v. Dep't of Navy*, 86 M.S.P.R. 606, 616 (2000).
6

7 I have reported fraud, waste, abuse, mismanagement, loss of postal property,
8 criminal acts, unsafe and unhealthy working conditions, suffering numerous
9 discrete acts and adverse actions.
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13 5. Violation of the Hatch Act's prohibition on federal employees influencing
14 elections. *OSC v. Lewis* (postal employee), 2014 MSPB 33, Docket No. CB-
15 1216-13-0063-T-1, (15 May 2014). *Id.*, ¶ 2; see 39 U.S.C. § 410(b)(1); 5 U.S.C. §
16 7323(a)(3); *Special Counsel v. Simmons*, 90 M.S.P.R. 83, ¶ 12 (2001). 5 U.S.
17 Code § 7323 (a)(1), - "use his official authority or influence for the purpose of
18 interfering with or affecting the result of an election;..."
19
20

21 Hatch Act Violations (5 U.S.C. 7321-7326), I ask for the Court's de nova review
22 (exhibit O).
23

24 (1) Have Agency Officials used their official authority and influence to
25 influence the results of elections?

1 (2) Have Agency Officials knowingly solicited “political activity” from
2 individuals “with business before their employing office?”

3 (3) Have Agency Officials engaged in political activity while on duty?
4

5 (4) Does \$300 million in discounts given to political parties and candidates
6 for political their “message” mailings violate the Hatch Act? (See USPS SEC
7 2013 Form 10-K, \$263 million in political mail revenue.)
8

9 USPS Sales Newsletter, Revin’ You Up, November 2014 (exhibit O), “Political
10 Mail payoff,” – “...Cutburth made the six-hour trip to southern Oregon to lay out
11 his strategy to the state leader... and showed the GOP leader how they could sue
12 the mail to grow their base and increase incremental funding... he referred local
13 candidates to the Field Sales Representatives (FSRs). The FSR’s in the office
14 responded by sending the endorsement letter to key candidates... The strong push
15 by the GOP captured the attention of the Democratic candidates who also asked
16 Cutburth how they could succeed with direct mail...” (See USPS SEC 2013
17 Form 10-K, \$263 million in political mail revenue.)
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21 AP News Article, 19 September 2010 (exhibit O), - “... Not only is the
22 Franking Group the dominate direct-mail vendor for taxpayer financed mailings
23 directed by Republicans, it easily outpaces leading Democratic Firms ...”
24
25

1 6. The Agency was willful (3-year limit) violated the Family Medical Leave
2 Act ("FMLA" or "Act"), 29 U.S.C. § 2601 et seq. 29 U.S.C. § 2617, authorizes
3 civil actions for violations of the FMLA. 29 CFR 825.220 - Protection for
4 employees who request leave or otherwise assert FMLA rights and § 825.220
5 Protection for employees who request leave or otherwise assert FMLA rights.
6 Pursuant to § 825.400(a)(1) I did file a FMLA complaint with the a complaint with
7 the U.S. Department of Labor (DOL), Wage and Hour Division (WHD) and
8 receive a right to file a private lawsuit pursuant to section 107 of FMLA, 15 April
9 2013 (exhibit A).
10
11

12 Family Medical Leave Act (FMLA) - I have exhausted my remedies with the DOL
13 WHD, 15 April 2013, and was issued a right to "bring a private action in civil
14 court." (exhibit A)
15
16

17 29 U.S. Code § 2615(a)(1), - "Exercise of rights. It shall be unlawful for any
18 employer to interfere with, restrain, or deny the exercise of or the attempt to
19 exercise, any right provided under this subchapter." Section 107 imposes liability
20 on an employer who "violates section 2615" 29 U.S.C. § 2617(a)(1), (a)(2).
21

22 13 June 2012 (Statement of Fact), I was granted FMLA #110000387180, for a
23 bad back condition. I had to get that protection because I was the only MPE on
24 day-shift (out of five positions) since MPE Nolan Parrish's retirement in
25

1 November 2011. My Supervisor SMO Ken Dow was saving the heavy work for
2 me to do aggravating my bad back and then denying me leave because of
3 “staffing.” When I did use my FMLA leave SMO Dow would dispose of one or
4 more of the maintenance shop tools or equipment I used to do my job and causing
5 me more stress. (29 CFR § 825.208(a) and § 825.208(b)(1) FMLA covered
6 condition.)
7

8 (FMLA), 29 U.S. Code § 2612(a)(1)(D), *Doe v. U.S.P.S.*, 317 F. 3d 339, 7
9 February 2003, - “...pursuant to the Family and Medical Leave Act alleges that
10 one of those officials disclosed his HIV status to his co-workers in violation of
11 both the Privacy Act and the Rehabilitation Act.”
12

13
14 MMO Marzec, 6 February 2013 (MSPB -0633 agency exhibit 2), - “Recently
15 you have brought to the attention of Management on a couple occasions [HWE
16 investigation] that you have two physical impairments. You claim to have an
17 impairment that has to do with your back [FMLA] and another concerning your
18 vision. In order to determine whether these impairments **pose a threat...**” (See
19 29 CFR § 825.305, certification of serious health condition and § 825.310, fitness
20 for duty exam.) Asking for medical documents for my FMLA condition violated,
21 29 U.S.C. § 2614(a)(1). “Generalized” fears about an individuals’ disability
22 cannot be used by the employer to discipline or disqualify an employee.
23
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1 *Mantolete v. Bolger* [USPS], 767 F.2d 1416 (9thCir.1985), *Bentivegna v. DOL*,
2 694 F.2d 619 (9thCir.1982).

3 Washington RCW 49.78.300(1)(a) FMLA prohibited acts, - “Interfere with,
4 restrain, or deny the exercise of, or the attempt to exercise, any right.”

5
6 FMLA leave Act recognizes two theories of civil liability (*Wysong v. Dow*
7 *Chem. Co.*, 503 F.3d 441, 446 (6th Cir. 2007) (citing *Edgar v. JAC Prods., Inc.*,
8 443 F.3d 501, 507 (6th Cir. 2006)): (1) the interference or entitlement theory
9 under 29 U.S.C. § 2615(a)(1); and (2) the retaliation or discrimination theory
10 under 29 U.S.C. § 2615(a)(2). Causing Harm - *Edgar*, 443 F.3d at 507-08 (citing
11 *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 89, 122 S.Ct. 1155, 152
12 L.Ed.2d 167 (2002)). FMLA 29 U.S. Code § 2617 (a)(1), liable to any eligible
13 employee affected—. 29 U.S. Code § 2617©(2), for a willful violation.

14
15 Notice of Enforced Leave, 8 May 13, MMO Marzec (MSPB A. ex.7). MMO
16 Marzec’s “notice” also includes the work restriction (light duty), - “You are
17 hereby prohibited from working on any wiring and performing any duties that
18 requires the ability to distinguish colored wiring.”

19
20 MM Norris’ “notice” allowing me to return to work, 6 March 2014, gives me a
21 work restriction for my FMLA condition, - “Rick [MMO Sudduth] presented you
22 with various colors of wires and you successfully identified all of them. You
23
24
25

1 provided Rick with documentation I further instruct you that if you are required to
2 do any electrical work which involves distinguishing shades of colors that you
3 seek confirmation [tell someone about my FMLA handicap] of the colors from
4 with either a coworker and/or supervisor. Your safety record is commendable...”

5
6 I was given work restrictions after I reported to “Management” during a
7 protected activity 5 U.S.C. 2303 HWE investigation (MSPB exhibit 27), HWE
8 Interview, 3 December 2013, - “... Why I am being instructed to place color dots
9 on things when he, the supervisor, knows I am color blind...”

10
11 Permanent “work restrictions,” (adverse actions) that prevent me from being
12 promoted (or perform the functions of my job) – permanently – because of my
13 handicap. See HRSSC Combined Field User guide, Feb 2012 (with exhibit Z, 6
14 March 2014, MM Norris) Bidder Review Process Steps, - “Review each Senior
15 Bidder on the report to determine if one of the following applies: ... (2) If the
16 employee has a condition making it unlikely that he or she can currently perform
17 the essential functions of the position... Selection may indicate the position cannot
18 be awarded...”

19
20
21
22 Prima facie – (1) I was given and denied FMLA protected leave; - (2) I suffered
23 discrete acts, adverse actions, other serious and material changes in working
24 conditions; and - (3) there is a direct connection to my FMLA usage and the
25

adverse actions suffered. *Chapman v. USPS*, 11-11028, D.C. Docket No. 5:10-cv-00635-CLS, (11thCir.2011). “At least” a motivating factor. *DiCarlo v. Potter*, 358 F.3d 408, 415 (6thCir.2004).

7. For willful violations of the Fair Labor Standards Act (FLSA) 5 CFR part 551, 551.103(3) – “Suffered or permitted to work by an agency whether or not formally appointed.” Title 29, Part 785, § 785.11. I filed a Complaint with the DOL WHD and received a right to file a private action, 6 January 2015 (exhibit B) Complaint pages 39-41.

I worked, 30 June 2013, 1 July 2013, 1 September 2013, and did not get paid for working (and also lost 3 days of leave).

Handbook ELM 434.12©(1), Hours actually worked, - “a time that management suffers or permits an employee to work.” Handbook PO-702, Tort Claims, 4223.2 Negligence, 422.3 Liability, and 423 Scope of Employment. A Tort may be filed after exhaustion of administrative remedies, 28 U.S.C. §§ 1345, 1346, and § 2875(a).

Washington State RCW 49.46.090(1), - “Any employer who pays any employee less than wages to which such employee is entitled...”

1 I ask that the Agency pay me for the work that and pay me one day of pay for,
2 30 June 2013, 1 July 2013 and 1 September 2013. I also ask for the return of the
3 5.5 hours of time owed for, 30 May 2013, for the rest of the day-pay after being
4 placed on enforced leave and the return of the 5.5 hours of leave taken. I also ask
5 for a day of pay for, 9 October 2015, penalty overtime not paid.
6

7
8
9 8. 3 July 2013 (exhibit C) I filed a MSPB SF-0752-13-0633-I-1 Complaint "...
10 I was placed on enforced leave because I complained in a Hostile Work
11 Environment investigation..." (exhibit C, MSPB Form 185-2). Hearing was held,
12 21 November 2013. MSPB Judge Grace Carter issued an unfavorable Initial
13 Decision, 28 April 2015 (exhibit D, untimely 15-months). I appealed and Appeal
14 Remand Order was issued, 13 October 2015 (exhibit E). Re-hearing was held, 28
15 January 2015 and 12 February 2016 (exhibit F), MSPB AJ Grace Carter issued an
16 Initial Decision on the remanded appeal for. Page 22, - "...you may file a civil
17 action against the agency on both your discrimination claims and your other
18 claims in an appropriate United States district court. See 5 U.S.C. 794a..."
19
20
21

22 Generally, the Court of Appeals for the Federal Circuit has exclusive
23 jurisdiction over appeals of MSPB determinations. See 5 U.S.C. § 7703(b)(1).
24 However, "where certain discrimination claims are presented before the MSPB . . .
25

1 , the plaintiff may seek review in district court.” *Kelliher v. Veneman*, 313 F.3d
2 1270, 1274 (11th Cir. 2002) (citing 5 U.S.C. § 7703(b)(2)) (footnote omitted). “In
3 these ‘mixed’ cases where discrimination claims ... the district court has
4 jurisdiction to review both the discrimination and nondiscrimination claims.” *Id.*
5 (citation omitted). The term “mixed case appeal” refers to a case which presents
6 an appealable non-discrimination claim coupled with a discrimination claim. *Id.*
7 (citing 29 C.F.R. 1614.302(a)(2) (1997)).
8
9
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11

12 a. Non-discrimination allegation – During the pre-hearing I ask that the
13 Agency appoint a non-attorney to represent management. The Administrative
14 Dispute Resolution Act (ADRA) requiring each federal agency to adopt the
15 ADRA’s rule to create policy federal Administrative Dispute Resolution.
16 Congress’ intent is clear in the 1996 ADRA, Pub. Law 104-320, Section 9. Use of
17 Nonattorneys, - “(a) Representation of Parties.--Each agency, in developing a
18 policy on the use of alternative means of dispute resolution under this Act, shall
19 develop a policy with regard to the representation by persons other than attorneys
20 of parties in alternative dispute resolution proceedings...”
21
22

23 The MSPB August 21, 2013, Order, - “... the Board rules provide that a party
24 may designate whomever they desire “as long as that person is willing and
25

1 available to serve.” 5 C.F.R. § 1201.31(b)... The Board has long held that “an
2 agency may choose to be represented by an attorney or no-attorney, at its
3 discretion.”

4
5 Congress’ public policy in the ARDA clearly states to develop administrative
6 procedures that do not use attorneys. “The first exception to the public duty
7 doctrine, “Legislative intent” exception, applies if there a regulatory statute that
8 evidences a clear legislative intent intended to protect a particular class of citizens.
9 If a statute evidences an intent to protect a particular class of individuals, a
10 member of the class may bring a tort action against a governmental entity for its
11 violation of the statute.” *Burnett v. Tacoma City Light*, 124 Wash. App. 550, 104
12 P.3d 677 (Div. 2 2004), *Halvorson v. Dahl*, 89 Wash. 2d 229, 595 P.2d 930
13 (1979).
14
15

16
17 The Agency’s Attorney did not have a written delegation of authority from any
18 higher level Agency Official required by law to represent the Agency.
19

20 (1) The Attorney did not represent the Agency.

21 (2) The Attorney represented the Agency’s management employees.

22
23 (3) I am an Agency employee and under the constitution’s fair and equal
24 principles I deserved the same level of representation.
25

1 (4) The Attorney's conduct did not meet the standard of care of a
2 reasonably prudent attorney. *In re Guardianship of Karan*, 110 Wash. App. 76, 38
3 P.3d 396 (2002).

4
5 As in *Grichenko v. USPS*, 524 F. Supp. 672 (E.D.N.Y. 1981) the MSPB
6 determination would have been an affirmative one absent interference by the
7 Agency's Attorney and entitles me to damages for that injury as well.^[8] See *id.* at
8 260, 261 n. 16, 98 S. Ct. at 1050, 1051 n. 16; *Bishop v. Tice*, 622 F.2d 349, 357 n.
9 17 (8th Cir. 1980). "The threshold question is whether or not the attorney's
10 services were intended to benefit the plaintiff [Agency]."

11
12
13 Whether or not a duty is owed is a question of law for the court to decide. *Trask*
14 *v. Butler*, 123 Wash. 835, 841, 872 P.2d 1080, 1083 (1994). See Attorney
15 Malpractice – Standard of Care, *In re Guardianship of Karan*, 110 Wash. App. 76,
16 38 P.3d 396 (2002). Recoverable damages in an attorney malpractice case are
17 measured by the amount of loss actually sustained. *Matson v. Weidenkopf*, 101
18 Wash. App. 472 3 P.3d 805 (2000).

19
20
21 Under RCW 4.84.185 the Court was equitable authority to award damages to
22 the opposing party subjected to frivolous claims advanced without reasonable
23 cause. *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wash. App. 918, 982
24 P.2d 131 (1999) (bad faith conduct in litigation.)
25

1 Because of the Agency Attorney's lack of candor (ABA Rule 3.3) the Board's
2 Decisions, contain numerous erroneous findings of material fact:
3
4

5 b. Due Process - 28 April 2015 (exhibit D), Initial Decision, page 8, - "...
6 During the hearing conference, I found ... because the agency had provided the
7 appellant minimal due process in effecting the enforced leave, and..."
8

9 Fifth Amendment's Due Process Clause, denial of written charges and oral
10 hearing before a higher authority. The Postal Reorganization Act (PRA) 39
11 U.S.C. §§ 1001-1011, 1201-1209, provides that the Postal Service shall establish
12 procedures guaranteeing its employees "an opportunity for a fair hearing on
13 adverse actions." 39 U.S.C. § 1001(b); *Bennett v. Barnett*, 210 F.3d 272, 275
14 (5th Cir. 2000) & § 1206(b) of the PRA *Pipkins v. USPS*, 951 F.2d 272, 275
15 (10thCir.1991). Showing that "the employer has deviated inexplicably for one of
16 its standard business practices." - *Kouvchinov v. Parametric Tech. Corp.*, 537 F.3d
17 62, 69 (1stCir.2008).
18
19
20

21 MSPB Remand, -0633-I-1, 13 October 2015 (exhibit E), page 4, - "... The
22 agency did not provide a label for its charge, but described the basis of its action
23 as its inability to determine..."
24

25 1. The charges where never written clearly for me to respond.

2. I was not provided a 30-day notice to respond.

3. I was not provided an oral hearing before a higher official before being deprived of my property (sick and annual leave) and my livelihood.

The Enforced Leave violated the Eight Amendment's prohibition on cruel and unusual punishment, - Unpaid Enforced Leave for a serious medical condition that did not and does not now affect job performance.

(1) Duty to use reasonable care – Negligent Investigation, RCWA 26.44.050 (Employer's negligent investigation leading to an erroneous adverse employment action and (2) Employer's has promised (Collective Bargaining Agreement) that adverse actions would be preceded by reasonable investigation. *Gaglidari v. Denny's Restaurants*, 117 Wash. 2d 426, 815 P.2d 1362 (1991)(employer's failure to follow procedure in employee handbook created triable issue of wrongful [adverse action].)

Ashcroft v. Iqbal, 129 S.Ct. 1937 1949 (2009), cited in *Platt v. USPS* and *Smith*, So.Dist. Indiana, Case 1:09-cv-00347-SEB-DML, Doc. 22, Filed 12/01/09
Page 2.

In *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), the Supreme Court held that violation of the Fourth Amendment "by a federal agent acting under color of his authority gives rise to a

1 cause of action for damages consequent upon his unconstitutional conduct." *Id.* at
2 390, 91 S. Ct. at 2001. The Court framed the question in *Bivens* as "whether the
3 petitioner, if he can demonstrate an injury consequent upon the violation by
4 federal agents of his Fourth Amendment rights, is entitled to redress his injury
5 through a particular remedial mechanism normally available in the federal courts."
6 *Id.* at 398, 91 S. Ct. at 2005.

7
8
9 (2) Fifth Amendment's Due Process Clause, denial of written charges and
10 oral hearing before a higher authority. The Postal Reorganization Act (PRA) 39
11 U.S.C. §§ 1001-1011, 1201-1209, provides that the Postal Service shall establish
12 procedures guaranteeing its employees "an opportunity for a fair hearing on
13 adverse actions, with representatives of their own choosing." 39 U.S.C. §
14 1001(b); *Bennett v. Barnett*, 210 F.3d 272, 275 (5th Cir. 2000) & § 1206(b) of the
15 PRA *Pipkins v. USPS*, 951 F.2d 272, 275 (10th Cir. 1991). Showing that "the
16 employer has deviated inexplicably for one of its standard business practices." -
17
18 *Kouvchinov v. Parametric Tech. Corp.*, 537 F.3d 62, 69 (1st Cir. 2008).

19
20
21 In *Carey v. Piphus*, *supra*, the Supreme Court, in an action brought under 42
22 U.S.C. § 1983, considered the claims of public school students who had been
23 suspended without the due process guaranteed them by the Fourteenth
24 Amendment. The issue before the Court involved the measure of damages
25

1 available and the proof of damages required. The Court recognized the importance
2 of guaranteeing that procedural due process be afforded regardless of the
3 substantive merits of the claim. *Id.* at 261-62, 98 S. Ct. at 1051.^[6] The Court
4 distinguished between injury caused by the suspensions themselves and the injury
5 caused by the failure to afford to the students those procedures to which they were
6 entitled. *Id.* at 260-62, 98 S. Ct. at 1050-51. In order to recover damages for
7 injuries caused by the suspensions, the plaintiffs were required to prove that had a
8 proper hearing been held, they would not have been suspended. Otherwise, a
9 recovery for those damages would constitute a windfall. *Id.* at 260, 98 S. Ct. at
10 1050. On the other hand, plaintiffs were entitled to recover actual damages,
11 including mental and emotional distress, caused by the denial of procedural due
12 process "even if their suspensions were justified." *Id.* at 262-64, 98 S. Ct. at 1051-
13 52, 1053. *See also, Bishop v. Tice*, 622 F.2d 349, 357 (8th Cir. 1980).

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17
18 In *Grichenko v. USPS*, 524 F. Supp. 672 (E.D.N.Y. 1981), the Court did not
19 find any special factors "counselling hesitation" or suggesting the
20 inappropriateness of a *Bivens* type action. *Carlson v. Green*, 446 U.S. at 19, 100 S.
21 Ct. 1472

22
23 (3) Eight Amendment's prohibition on cruel and unusual punishment, -
24 Enforced Leave for a serious medical condition. The analysis of *Bivens*-type
25

1 actions was further refined in *Carlson v. Green*, 446 U.S. 14, 100 S. Ct. 1468, 64
2 L. Ed. 2d 15 (1980). In *Carlson*, the plaintiff asserted the federal question
3 jurisdiction of the Court, claiming that the defendant had violated the Eighth
4 Amendment prohibition against cruel and unusual punishment.
5

6
7
8 c. Just Cause - 28 April 2015 (exhibit D, Initial Decision (ID), page 10, -
9 "...nexus exists between the conduct and the service efficiency and that the
10 penalty was reasonable. ...I find no need to reopen the record in this appeal,
11 because the record is fully developed on the merits of the agency's **charge**..."
12

13 **CHARGES:**

14 ID page 10 "...The reason cited by the agency to place the appellant on
15 enforced leave was that the agency was "unable to determine that you can work
16 safely due to your color blindness and repeated attempts to engage you have been
17 unsuccessful."
18

19
20 ID Page 11, "...HCD, Norris Testimony. He testified that after the
21 appellant's impairment was brought to his attention, he felt that the agency could
22 be exposing itself to liability and that he would "feel personally liable" if he
23 allowed the appellant to continue working... advised him in writing that an
24
25

adverse action could result should he fail to cooperate... that the appellant refused to cooperate with the agency's efforts to evaluate his colorblindness..."

Statements concerning the reasons for an adverse employment action are admissible under Rule 801 (d)(2)(D) only if the declarant was involved in the decision. *Aliotta v. Nat'l R.R. Passenger Corp.*, 315 F.3d 756 (7th Cir.2003)).

The Agency failed to articulate a legitimate cause of action reason for the Enforced Leave suspension for my "serious medical condition," *Davis v. Team Elec. Co.*, 520 F.3d 1080 (9th Cir.2008), terminations for "just cause" or a specified infraction constituted breaches of the employment contracts. See *Gaglidari v. Denny's Restaurants. Inc.*, 117 Wash.2d 426.815 P.2d 1362 (1991). See USPS Employee Labor-Relations Manual (ELM) Chapter 660, Conduct, 661.2 (dd), - "The prohibition against certain personnel practices (5 U.S.C. § 2302, Prohibited Personnel Practices (iii) an action under Title 5 chapter 75)."

I was not "involved" in the decision to place me on enforced leave because of my handicap. In fact I clearly stated that I did not want to participate in the "interactive process" to determine if I posed a Threat because of my handicap.

d. FMLA - 28 April 2015 (exhibit D), Initial Decision, page 8, - "In addition, the following affirmative defenses raised by the appellant were acknowledged: ...

1 The appellant alleges that the FMLA was violated when the agency continued to
2 maintain him in enforced leave status after his physician cleared him to return to
3 duty based on his FMLA approved impairment..." Page 12, - "He submitted
4 evidence that during the course of this appeal, he applied for FMLA certification
5 for his colorblindness condition. *Id.*, Tab 8, Exhibit 40. The appellant asserts that
6 because his FMLA certification does not indicate a need for him to be absent from
7 work, the agency violated the FMLA by continuing him in enforced leave
8 status.... Here, the record shows that as of May 30, 2013, the appellant's
9 colorblindness was not a FMLA protected serious medical condition..." Page 13,
10
11 - "...Thus, I find no evidence that the appellant's placement in enforced leave
12 status contravened [to prevent or obstruct] his FMLA rights. The charge is
13
14
15 SUSTAINED."

16 23 November 2012, EEO 1E-985-0004-12, Affidavit SMO Dow (Affidavit
17
18 B, page 21), Question 3, - "During the Pre-Disciplinary Interview, did
19 Complainant offer an explanation for his failure to meet the attendance
20 requirements?..." Answer 3, - "Yes he did said, I Have FMLA."

21
22 20 February 2013, I applied for and received FMLA approval for a serious
23 medical condition – color blindness #110000402232. I was required to take
24 (FMLA approved) leave, pay for a medical exam out of my own pocket and
25

1 provide medical documents to the Agency. I also provided those medical
2 documents to the HRSSC FMLA Office.

3 10 May 2013, I sent the HRSSC FMLA Office a copy of the 8 May 2013
4 “notice” of enforce leave “because of your serious medical condition – color
5 blindness.” 15 May 2013, HRSSC forwarded my FMLA Certification and WORK
6 RESTRICTIONS to the OHNA Western (Seattle District) for review of the
7 DRAC.
8
9

10 23 May 2013, I asked for and was approved (signed by SMO Dow) a
11 FMLA 110000402232 day off to see my doctor. 23 May SMO Dow emailed the
12 HRSSC FMLA Office and they told him that my FMLA was disapproved. (30
13 May enforced leave start) 5 June 2013, SMO Dow took by my FNKA leave pay
14 and changed it to Leave without pay. A grievance was filed and I got my pay back.
15
16

17 30 May 2013, When SMO Dow “placed” me the Enforced Leave he tore
18 up my FMLA Leave request. (Noting that I never signed a PS Form 3971 Request
19 for Leave to authorize the taking of my save sick and annual leave (Theft).)
20

21 EEO 1E-985-0006-13 Investigative Affidavit (page 0767, Affidavit B,
22 page 48) SMO Dow, 2 July 2013, Question 56, - “Mr. McDermott alleges on or
23 about May 30, 2013, you tore up his FMLA leave request. Did you tear up Mr.
24 McDermott’s FMLA leave request? If so, why did you do so? Answer 56, - “Yes,
25

1 I told him he needed to request annual or sick leave not FMLA he was being sent
2 home on enforced leave which is not his FMLA case.”

3
4 2 June 2013, I requested 160 of FMLA leave for 2 June – 3 July on the
5 HRSSC 1-800 leave request. 4 June ERMS generated a PS Form 3971 for FMLA
6 110000402232 and SMO Dow sent a copy to me to sign and return. I did sign it
7 and sent back the FMLA Leave Request back to SMO Dow.
8

9 1 July 2013, before SMO Dow called the Inspectors and had me tossed out,
10 I gave SMO Dow a PS Form 3971 FMLA Leave Request for 30 – May – 29 June.
11 SMO Dow disapproved it “Employee on Enforced Leave.”
12

13 11 July 2013, EEO #1E-985-0006-13 Investigative Affidavit of MM Norris
14 (EEO Investigative Report page 0838, Affidavit E, page 10), Question 27, - “Mr.
15 McDermott contends he has been denied FMLA leave during his ‘Enforced Leave’
16 period. Has he been denied FMLA leave during his ‘Enforced Leave period? If
17 so, why?” Answer 27, - “I do not know.”
18

19
20 DOL OWCP, Denial Decision #146093140 (stress), 10 December 2015
21 (exhibit P), reason for denial #1, - “You alleged that the medical restrictions were
22 ‘forced upon you.’ As you provided the information to the agency about your
23 back injury [FMLA] and being colorblind [FMLA], it is found that no medical
24 restrictions were ‘forced upon you’.” #6, - “You alleged the manager was saving
25

1 heavy work for you to do by yourself. ... Your claim of FMLA protection does
2 not apply to work assignments only the use of Leave Without Pay. Therefore, this
3 is found to not have occurred...”

4
5
6 e. Hostile Work Environment - MSPB Initial Decision, 28 April 2015 (exhibit
7 U), page 8, “...because the agency had provided the appellant minimal due
8 process... The appellant alleges that he was subjected to a hostile work
9 environment and retaliated ...” Page 9, - “... The appellant also alleges that he was
10 retaliated against for protected disclosures made to the Judicial Officer ... in
11 contravention of the Whistleblowers’ Protection Act.” Page 21, - “Although it is
12 questionable whether any of the ‘statements’ made by the appellant actually
13 constitute a ‘protected disclosure,’ I find it unnecessary to make a determination
14 since even if the appellant made a protected disclosure to the AJO and to the
15 NEEOISO, there is no evidence that anyone in his management chain was
16 aware...”

17
18 I have reported Criminal Acts – Agency “Judicial” Decision, 25 April 2013
19 (exhibit N2), - “The Office of the Postmaster General has asked me to respond to
20 your misguided April 6, 2013, filing with the Postal Service’s Judicial Officer. ...
21 You also appear to believe that you can mix ‘criminal actions’ ... EEOC
22
23
24
25

1 regulations do not provide for the consideration of criminal matters... Follow the
2 remand, you chose to file a civil action..."

3 Public Policy Exception – The Court in *Hanson v. America Online, Inc.*, 96
4 P.3d 950 (Utah 2004), outlined categories of public policies eligible for
5 consideration: (1) refusing to commit an illegal or wrongful act. – I was forced to
6 work with (criminal) Contractor under threat of discharge and given a Letter of
7 Warning (discipline) for protesting a criminal act. I suffered other adverse actions
8 by the Agency Official(s) involved in the criminal acts and who created the HWE.
9 Hanson, Justice Nehring, - "The Public Policy exception may be invoked only
10 sparingly in circumstances where the cause of the employee's discharge implicates
11 a public policy of such clarity and substance to impose on the employer a legal
12 duty... to be free from discharge for exercising statutory rights," – *Perks v.*
13 *Firestone Tire & Rubber Co.*, 611 F.2d 1363 (3d Cir. 1979). I did report criminal
14 acts to the Agency, *Fox v. MCI Communications*, 931 P.2d 857 (Utah 1997), -
15 "discharge resulting from informing authorities will support an action for
16 wrongful discharge." In some circumstances, warnings may be considered adverse
17 actions. *Pantoja v. Am. NTN Bearing Mfg. Corp.*, 495 F.3d 840, 849 (7th Cir.
18 2007).

1 I have reported Criminal Acts of my "management chain" to the Agency's
2 Judicial Officer, 25 April 2013 (exhibits N, N1, N2 & MSPB exhibits 10, 11, 12),
3 - "The Office of the Postmaster General has asked me to respond to your
4 misguided April 6, 2013, filing with the Postal Service's Judicial Officer. ... You
5 also appear to believe that you can mix 'criminal actions' ... EEOC regulations do
6 not provide for the consideration of criminal matters..."
7

8
9 A Work Environment so hostile that the Agency's Postmaster General and
10 Judicial Officer, NEEOISO Manager, William Caldwell, and Postal Inspectors
11 know the possibly criminal (18 U.S.C. 207) contracts to retired Postal Employees
12 and did nothing (but harass or allowed harassment of me). After filing my HWE
13 complaint, claiming the loss of postal property, I was subjected to more retaliation
14 and harassment, by the very same Federal Officials I was alleging to have
15 committed criminal acts against me. I was again injured.
16
17
18
19

20 f. Postal Inspectors - Inspection Service, Threat Summary Report, 16
21 February 2010, - "On February 10, 2011, Seattle Postal Inspector were notified ...
22 during a meeting with Maintenance Employee Brenda BURKE, Shop Steward
23 Lance McDermott, Maintenance Supervisor Kenneth Dow... [page 4] According
24 to Dow, BURKE made a statement referring to a postal employee that was
25

1 murdered by another postal employee. Burke also made a statement that she was
2 going home to get her..." 10 March 2011, Notice of 14-Day suspension, Brenda
3 Burke, - "... When Mr. Dow explained to you that the District Assessment Team
4 was unable to find productive work ... and that you would be placed on
5 administrative leave, you began yelling. You stated ... 'I understand why people
6 go postal..."

8
9 EEO #1E-985-0006-13 Investigative Affidavit of Supervisor of Maintenance
10 Operations (SMO) Ken Dow (EEO Investigative Report page 0769 Affidavit B,
11 page 42), Question 45, - "Mr. McDermott alleges that you filed a false threat
12 report on him which led to the April 8, 2013 questioning by inspectors. What role
13 if, any, did you have in initiating the inspector's inquiry ..." Answer #45, - "See
14 attached report."

16
17 2 July 2013, EEO 1E-985-0006-13 Investigative Affidavit (page 0767, Affidavit
18 B, page 48) SMO Dow, Question 64, - "Mr. McDermott contends he has been
19 treated similarly to former employee Brenda Burke in that she was placed on leave
20 and then fired after you filed a false threat report against her. ... In addition,
21 explain if and why that report was made regarding her, and if and why she was
22 placed on leave and fired..." Answer 64, - "... Brenda said she knew why postal
23
24
25

1 employees do what they do Lance McDermott told the inspection service about
2 Brenda saying she was going to get a gun?"

3
4 11 July 2013, EEO 1E-985-0006-13 Investigative Affidavit (page
5 0839, Affidavit E, page 11) MM Norris, Question 31, - "Mr. McDermott contends
6 he has been treated similarly to former employee Brenda Burke in that she was
7 placed on leave and then fired after a false threat report was filed..." Answer 31, -
8 "... The threat report was made after the employee made a comment regarding a
9 USPS employee (Deceased by gunshot) and what happened to him... Ms. Burke's
10 case involved the lack of available work within her medical restrictions resulting
11 from an On the Job injury. Ms. Burke was never fired..."
12
13

14 Email SMO Dow to MMO Marzec, 3 April 2013 (while I was on stress
15 leave 1-5 April) 7:48am, Subject: "McDermott machete." Email MMO Marzec to
16 Western Area Attorney Tita (Attorney involved in my EEOs and MSPB
17 complaints) & Threat Assessment Team Leader Dr. Picard (former EAP
18 Contractor unlawfully give a Civil Service position), - "McDermott is getting to be
19 a concern. I told Dow to call 911 the next time he see him with a machete on the
20 property." (My car in the public parking lot was not on "postal" property.)
21
22

23 Email Dr. Picard to MMO Marzec & Attorney Tita, 3 April 2013,
24 4:22pm, - "Also, go ahead and fill out an incident report." (Note MM Norris
25

1 contacted "legal regarding the individual we identified as color blind..." (email 2
2 April 2013 and noting that I was given the enforced leave "notice" 8 April.)

3 Email MMO Marzec SMO Dow, 3 April 2013 5:07pm, - "Go to the
4 District home page and fill out an incident report on what you observed with
5 Lance and the machete... I would do it, but is specifically states that the
6 Immediate supervisor should do it [by the end of the day the incident happened]."
7

8
9 Email SMO Dow to Dr. Picard & Inspector Parkinson, 4 April 2013
10 7:36am, Subject: "Threat Assessment Notification..."
11

12 Email Inspector Brooks to SMO Dow & Dr. Picard, 4 April 2013
13 8:27am - "... There was no threat communicated by McDermott with the machete,
14 he was only seen carrying it from his car to the green belt along the property
15 [Green River cutting blackberries back during lunch to pick later in the
16 summer]..."
17

18 U.S. Postal Inspection Service, Seattle Division, Initial Report by
19 Inspector Brooks, 1 July 2013, - "On July 1, 2013 ... Inspector Brooks was
20 notified that Kent Police Department was also notified by Supervisor Ken Dow,
21 because Mr. Dow felt threatened by McDermott's presence and unusual
22 behavior..."
23
24
25

Inspector Dahlin, Memorandum of Interview, Case # 1898225-WPV, 1
July 2013, - "... Mr. McDermott was interviewed regarding his illegal entry into
the postal PMA facility and his suspicious behavior... Mr. McDermott was
informed he was trespassing on federal property..."

16 July 2013, EEO #1E-985-0005-13 Investigative Affidavit of
Inspector Brooks (EEO Investigative Report page 0873 Affidavit G, page 3),
Answer 7, - "... No report was made, due to this issue not being associated to a
threat..."

16 July 2013, EEO #1E-985-0005-13 Investigative Affidavit of
Inspector Bonds (EEO Investigative Report page 0871 Affidavit G, page 3),
Answer 7, - "... No report was made, due to this issue not being associated to a
threat..."

g. Postal Property -

(1) Priority Mail Annex (PMA) - 26 September 2012, EEO 1E-985-
0004-12, Affidavit MMO Norris (Affidavit D, page 4), Issue #20, - "On
(unidentified date(s)) your Supervisor disposed of Postal property and equipment
you needed to perform your work. On (unidentified date) due to a hazardous

1 condition, you suffered three insect bites this year.” Answer, - “I have no
2 knowledge of this complaint...”

3 Undated and unsigned, EEO 1E-985-0004-12, Affidavit SMO Dow (Affidavit
4 B, page 5), Question 22, - “Since January 2012, did you remove the toaster,
5 microwave, icebox, table, chairs and stools from the PMA? If you removed all or
6 any of these items [postal property], please explain...” Answer 22, - ““I was told
7 by my manager to remove all non-tool & parts related item ...” Page 8, Question
8 40, - “... did you tell an employee to discard metal and wood from the
9 Complainant’s work area?...” Answer 40, - “All employees are told to put
10 recycled materials in the recycle bins, it is not one employee job, Lance puts
11 material in the recycle bin.” Page 9, Question 47, - “... did you direct someone to
12 place a chair the Complainant had been using in the dumpster? If so, please
13 explain...” (Note: SMO Dow moved the icebox, microwave, toaster (purchased by
14 Brenda Burke), and TV into his office and when he left/retired, they were all
15 broken.)

16 Email SMO Dow, 24 October 2012 (MSPB 110), - “...He started to yell at me
17 saying I have gotten rid of 50,000 dollars’ worth of stuff...” Email SMO Dow to
18 OIG Inspector Casey Snyder, 3 April 2013 (While I was on stress leave), copy of 7
19 November 2012 email SMO Dow to MMO Marzec, SUBECT: “McDermott
20
21
22
23
24
25

1 stealing postal property.” Noting that Inspector Snyder investigated (took into
2 account before adverse action – VEOA) my military status – “Affiliation Service
3 Retiree.”

4
5 14 May 2013, EEO #1E-985-0006-13 Investigative Affidavit of Supervisor of
6 Maintenance Operations (SMO) Ken Dow (EEO Investigative Report page 0739
7 Affidavit B, page 12), Question 18, - “Mr. McDermott contends that on January
8 13, 2013, he became aware that you disposed of more equipment he used
9 including: Metal lathe...” Answer 18, - “No, it is located at the main plant.”

11
12 15 May 2013, EEO #1E-985-0006-13 Investigative Affidavit of MMO Marzec
13 (EEO Investigative Report page 0803 Affidavit D, page 4), Question 10, - “Mr.
14 McDermott contends that he became aware on January 13, 2013 that more of his
15 equipment had been disposed of by Ken Dow...” Answer 10, - “This equipment is
16 the property of the U.S. Postal Service, was moved by to the Seattle P&DC under
17 the direction of Mr. Dow, as part of the housekeeping effort...”

19
20 24 May 2013, EEO #1E-985-0006-13 Investigative Affidavit of MMO Allen
21 (WHE Investigator) (EEO Investigative Report page 0789 Affidavit C, page 16),
22 Question 14, - “Mr. McDermott contends that he became aware on January 13,
23 2013 that more of his equipment had been disposed of by Ken Dow...” Answer
24 14, - “I have no knowledge of what specific Postal equipment was removed from
25

1 the Seattle PMA facility. What knowledge I do have is from overheard
2 conversations and Mr. McDermott ranting [protected activity – HWE
3 investigation] to me about equipment being removed. I do not know who made
4 the decision to remove the equipment or why.”

5
6
7
8 (2) Air Mail Center (AMC) - My individual and class claims that the closure
9 and destruction of the SeaTac Post Office and Air Mail Center Facility (owned
10 Public Property) was unlawful because it was not excess to the needs of the Postal
11 Service (or Public) since the Agency is leasing other facilities at a greater cost to
12 the Public (Taxpayer suit) paying the higher costs of leasing (the PMA a facility
13 without HVAC) and the added equity of the Public Property (access) lost creating
14 a – Public Nuisance.
15

16
17 With regard to premises liability specifically, Washington has adopted the
18 Restatement (Second) of Torts sections 343 and 343A (1965). Section 343
19 provides liability;
20

21 (a) “Exercise of reasonable care to discover the condition, and should
22 realize that it involves an unreasonable risk of harm to such invitees, and;”
23

24 The number one reported on-the-job injury in the Kent PMA is insect bites.
25 June 2013 Safety and Health Inspection Report #8”Mail Processing: Bug Zappers

1 are not plugged in, mosquitos are biting.” “The defendant had actual or
2 constructive notice of the unsafe and unhealthy conditions.” - *Gonzalez v. Wal-*
3 *Mart Stores, Inc.*, 299 F. Supp. 2d 188, 192 (S.D.N.Y. 2004) (citing *Taylor v.*
4 *United States*, 121 F.3d 86, 89-90 (2d Cir. 1997)). And, the Employer knows that
5 West Nile and Zika viruses are also threatening employee’s health and safety.
6

7 (b) “should expect that they will not discover or realize the danger, or will
8 fail to protect themselves against it, and;” (Employer Knowledge – Grievance
9 MNT 49-10, 21 July 2010, - “... forcing employees to work in unbearable working
10 conditions...” – Steward Brenda Burke.
11

12 (c) “fails to exercise reasonable care to protect them against the danger.”
13 In fact a HVAC was ordered in response to the grievance, 11/11/2011 and
14 cancelled 04/09/2012 (exhibit Q1). Requiring a Court Order (exhibit Q1 & MSPB
15 44) to install.
16

17 Washington State WISHA regulations create a duty toward employees
18 performing work on the property. *Baerlein v. State*, 92 Wash. 2d 229, 232, 595
19 P.2d 930,932 (1979).
20

21 The Port of Seattle Commission, 26 August 2008, voted to terminate the land
22 lease for the U.S. Postal Service’s SeaTac Air Mail Center (AMC) and Post
23 Office. This was done with out any Public notice, opportunity to be heard, or
24
25

1 comments taken into account. Changing a public paid for federal facility serving
2 the public's needs into a "cell phone parking lot."

3 I wrote the Mayor of SeaTac, 4 May 2009. I met with the City Manager Craig
4 Ward and Mayor Ralph Shape showing them that the Port and the Postal Service
5 had not had the required public meeting or produced the required Feasibility Study
6 and Area Mail Processing Plan.
7

8
9 The Mayor wrote Seattle District Manager, Katherine Nash, and she lied to the
10 Mayor, 9 May 2009, - "...As I suspected notice to city officials is mandatory only
11 when the USPS discontinues a post office station or branch... The Postal Service
12 has lost the lease of the AMC..."
13

14 Mayor Shape's letter to me, 18 May 2009, - "... We cannot find anything to
15 dispute her statements... The Port replied that the leases expires on December 31,
16 2030, but included a clause that allowed the Port to terminate the lease with one
17 year notice if the site was needed for a capital project which was approved by the
18 Commission. According to the Port, the site is needed for hardstand for parking
19 aircraft..." According to the Port's Commission Agenda, 26 August 2008, the
20 property was needed for a "cell phone lot" which is not a capital project.
21
22
23

24 The Postal Accountability and Enhancement Act (PAEA), Public Law 109-435,
25 120 Stat 3198, § 302 Network Plan, requires an Area Mail Processing Plan (AMP)

1 Notification Process, that includes notification to state and local community
2 leaders of the start of the “process.” The Agency is also required to having a
3 Public Meeting before any decision is made to close a Public Serving Post Office
4 or Mail Processing Facility.
5

6 I have protested for myself and other employees (class) the unsafe and
7 unhealthy working conditions:
8

9 (a) USPS Handbook AS-503, Standard Design Criteria, 4-2 HVAC, 4-
10 2.15.3, - “Indoor Air Quality Standards These standards encompass control
11 technologies that provide for the health and safety of building occupants...”
12

13 (b) USPS Handbook RE-5, Building and Site Security Requirements,
14 Purpose, 1-1.1, - “The standards in this handbook are intended to ensure a safe and
15 secure environment for Postal Service employees...”
16

17 © 39 U.S. Code § 409(f)(1) Each building constructed or altered by the
18 Postal Service shall be constructed or altered, to the maximum extent feasible as
19 determined by the Postal Service, in compliance with 1 of the nationally
20 recognized model building codes and with other applicable nationally recognized
21 codes.
22

23
24 “Workers’ legitimate concerted activities,” - *NLRB v. Washington Alum Co.*,
25 370 U.S. 9 (1962). See *St. Mary’s Honor Center v. Hicks*, 509 U.S. 502 (1993) -

1 “a crusade to terminate him.” “... For the trier of fact to infer the ultimate fact of
2 discrimination from the falsity of the employer’s explanation.”- *Reeves v.*
3 *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000). “A jury should decide,”
4 *Taylor v. Runyon [USPS]*, 175 F.3d 861 (11th Cir. 1999).

5
6 Constitution Article IV, section 3, clause 2, vests in Congress the power to
7 “dispose of” and make “all needful rules” regarding federal property. My
8 individual and Class claims are arguably within the zone of interest protected by
9 federal statute and the requirements of Article III remain: “the plaintiff still must
10 allege a distinct and palpable injury to himself, even if it is an injury shared by a
11 large class of other possible litigants” with a “fairly traceable” causal connection
12 between the claimed injury and the challenged conduct. – *Simon v. Eastern*
13 *Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976) (Constitutional Law,
14 WEST (1991) pages 75-77.) In *Nebbia v. New York*, 281 U.S. 502 (1934), the
15 Court stated that the Court’s function – “is to determine in each case whether
16 circumstances vindicate the challenged regulation as a reasonable exertion of
17 governmental regulation as a reasonable exertion of governmental authority or
18 condemn it as arbitrary or discrimination.”

19
20 The large SeaTac AMC facility had a Heating Ventilation Air Condition
21 (HVAC) as required by the Public Buildings Act, title 4, and Agency Standard
22
23
24
25

1 Design Criteria for the health and safety of all employees. The Kent PMA where I
2 work does not have a HVAC system and employees work in 85+ degree heat and
3 are constantly bite by insects in the summer since the Agency saw fit to lease a
4 “temporary” facility between the Green River and a wetlands wildlife habitat. The
5 BOG approved a Logistics and Distribution Center to be built in 2008 to replace
6 the “temporary” PMA. Then the Agency said that it did not have the money. The
7 Union tried to get the Agency to move the PMA into the empty AMC facility to
8 save money and improve the working condition of employees. I attended the first
9 Union/Management meeting concerning the AMC. The Union asked for a copy of
10 the Area Mail Processing Plan or the written decision that the AMC needed to be
11 destroyed. At the meeting was newly promoted Plant Manager Don Jacobus with
12 a from Employee Assistance Program (EAP) contractor Dr. Picard who had been
13 unlawfully hired and given a management job as the District Complement
14 Coordinator in violation of the Civil Service Reform Act. I.E. Dr. Picard went for
15 helping stressed out employees as a contractor into a hit-man for management
16 getting rid of employees via the unlawful Treat Assessment Team (TAT) and the
17 District Reasonable Accommodation Committee (DRAC).

22
23 Under Washington law, a negligence claim requires a showing of “the existence
24 of a duty, breach of that duty, resulting injury and proximate cause.” *Charlton v.*
25

1 Toys “R” Us—*Delaware, Inc.*, 158 Wn. App. 906, 912 (2010). With regard to
2 premises liability specifically, Washington has adopted the Restatement (Second)
3 of Torts sections 343 and 343A (1965). Section 343 provides that: A possessor of
4 land is subject to liability for physical harm caused to his invitees by a condition
5 on the land if, but only if, he: (28 U.S.C. §§ 2674, 1346(b)(1))
6

7 (a) knows or by the exercise of reasonable care would discover the condition,
8 and should realize that it involves an unreasonable risk of harm to such invitees,
9 and;
10

11 (b) should expect that they will not discover or realize the danger, or will fail
12 to protect themselves against it, and;
13

14 (c) fails to exercise reasonable care to protect them against the danger.
15

16 ----No HVAC system in the Kent, PMA, causing insect bites – injuries to all
17 employees with exposure to possibly fatal (West Nile) injures.
18

19 ----No HVAC system in the Kent, PMA, causing insect bites – injuries.
20

21 *Brant v. Market Basket Stores, Inc.*, 72 Wn.2d 446 (1967). “The defendant
22 should have known of any dangerous condition.” *Id.* at 446-47. “Exercise of
23 ordinary care, to have removed the danger.” *Ingersoll v. DeBartolo, Inc.*, 123
24 Wn.2d 649, 652 (1994) (citing *Smith v. Minning’s, Inc.*, 13 Wn.2d 573 (1942)).
25

1 (*Meling v. USPS, E.Dist. of Washington*, Case 2:10-cv-03017-RMP, Document
2 43, Filed 07/22/11, Judge Peterson.)

3 5 U.S.C. § 2302(a)(2)(D) disclosures of (D)(i), - “any violation of any law, rule,
4 or [criminal] regulation; or (ii) gross mismanagement [beyond the scope of
5 discretionary authority], a gross waste of [Public] funds, an abuse of [federal]
6 authority...”

7
8
9 I seek the Court’s injunctive relief for an Order to the Agency to install a HVAC
10 system in the Kent PMA for the safety and health of all employees. I ask the court
11 to Order the Agency to build the Logistic & Distribution Center (with HVAC) that
12 Management promised to employees, before tearing down the AMC facility.
13

14
15
16 h. Injury – Insect Bites (class), 24 May 2013, EEO #1E-985-0006-13
17 Investigative Affidavit of MM Norris (EEO Investigative Report page 0830
18 Affidavit E, page 2), Question 6, - “To your knowledge, have you been named by
19 Mr. McDermott as a Responsible Management Official ...” Answer 6, - “Mr.
20 McDermott named me ...a supervisor disposing of Postal Property and suffering 3
21 insect bites...”
22

23
24 Undated and unsigned, EEO 1E-985-0004-12, Affidavit SMO Dow (Affidavit
25 B, page 17), Question 92, - “The Complainant reported that due to unhealthy

1 conditions insect bites were the number one reportable injury at the facility. Is this
2 a true statement? If so, have you and/or the Postal Service taken any action
3 concerning the unhealthy conditions?..." Answer 92, - "No one has ever come to
4 me about insect bite, I had a contractor come out and spray [expose employees to
5 non-OSHA approved insecticide] for mosquitos so we would not have a problem."
6

7 The number one reported on-the-job injury (PEG Interview Questions, FY 2009-
8 2010, MSPB exhibit 64) in the Kent PMA is insect bites. June 2013 (exhibit K12)
9 Safety and Health Inspection Report #8"Mail Processing: Bug Zappers are not
10 plugged in, mosquitos are biting." "The defendant had actual or constructive
11 notice of the unsafe and unhealthy conditions." - *Gonzalez v. Wal-Mart Stores,*
12 *Inc.*, 299 F. Supp. 2d 188, 192 (S.D.N.Y. 2004) (citing *Taylor v. United States,*
13 *121 F.3d 86, 89-90 (2d Cir. 1997)*)).
14
15

16 I seek monetary compensation to all employee who's safety and health has
17 suffered because the Agency has not proved the required HVAC system in the
18 Kent PMA.
19

20
21
22 i. No Agency Policy for Enforced Leave -
23
24
25

1 MSPB Remand -0633-I-1, 13 October 2015 (exhibit E), page 15, "... Although
2 we have considered the appellant's remaining arguments, such as his allegation
3 that the agency has no official policy concerning enforced leave ..."

4
5 MSPB -0633, exhibit 30, 7 June 2013, Steward Cornette Request for
6 Information, Question #2, - "Copy of the policy for enforced leave." Q#5 - Copy
7 of all investigation records on McDermott by Jim Norris..." Q#9, - "Copy of
8 document(s) and or policy stating what constitutes placing Lance McDermott on
9 enforced leave." MM Norris Answer #2 - "There is no policy for enforced leave."
10 A#5 - Jim Norris does not have any investigation records..."

11
12 A#9, - "Mr. McDermott refusal to speak with management ..."

13
14 5 CFR § 630.1203(a)(4), an agency may establish a uniformly applied practice
15 or policy applying to all similarly-situated employees.
16

17 See generally *Drumheller v. Department of the Army*, 49 F.3d 1566, 1574 (Fed.
18 Cir. 1995) (agencies are required to follow their own regulations). USPS policy
19 prohibits employees from engaging in conduct that would contribute to an
20 unpleasant working environment, harassment, intimidation, threats, or bullying.
21
22 *Ahmed v. U.S. Postal Service*, 230 F.3d 1366 (9th Cir. 2000) & *Beno v. U.S.*, 1994
23 WL 457232 (N.D. Ill. 1994).
24
25

1 The Agency does not have an Office of Personnel Management (OPM)
2 approved PS Form 3971 Leave Request, Leave Code, for Enforced Leave. I never
3 signed a PS Form 3971 authorizing the Agency to take my saved annual and sick
4 leave.

5
6 The Agency does not have an OPM approved Personnel Action Code for the
7 require PS 50 to (illegally) place an employee in an Enforced Leave Status. The
8 required PS 50 was never created and a copy placed in my Official Personnel File
9 (OPF). My OPF does not contain any documents showing that I was placed on
10 unpaid Enforced Leave for over nine months.
11

12
13 I ask the Court to Order the Agency to remove all reference of the unlawful
14 enforced leave and associated actions from my Federal Record – the Agency's,
15 Federal Law Enforcement, and linked DOL OWCP/FMLA, etc.
16
17

18
19 9. 23 March 2015 (exhibit G), I filed a Merit System Protection Board (MSPB)
20 Veterans Employment Opportunities Act (VEOA), for stripping me of my Desert
21 Strom veterans' preference, and Uniformed Services Employment and
22 Reemployment Rights Act (USERRA), for retaliation from trying to protect other
23 veterans' rights (Brenda Burke) complaints. It has been over 180 days without a
24 Decision made.
25

1 The Court has VEOA and USERRA jurisdiction for claims of discrimination of
2 any benefit of employment 38 U.S.C. § 4311(a) and claims of reprisal, 38 U.S.C. §
3 4311(b). *Lazaro v. Dept. of Veterans Affairs*, 666 F.3d 1316, 1319 (Fed.Cir.
4 2013).

5
6 2 December 2015 (MSPB SF-3330-15-0432-I-1, Doc. 23) Administrative Judge
7 (AJ) Grace Carter issued a Dismissal Without Prejudice so that "the hearing in
8 remand appeal and the hearing in this appeal occur at the same time... hearings
9 can be conducted simultaneously" (page 2).

10
11 26 January 2015, AJ Carter issued an Order that my MSPB SF-3330-15-0432-I-
12 1 VEOA and USERRA complaints would have a combined hearing with the
13 remanded appeal SF-0752-13-0633-I-1 hearing 28 January 2016.

14
15 12 February 2016, after the hearing AJ Carter issued an Initial Decision for SF-
16 0752-13-0633-I-1 and not SF-3330-15-0432-I-1. Therefore pursuant to 5 U.S.C.
17 3330a I terminated the MSPB proceeding to file a civil action (amended
18 complaint) under 38 U.S.C. 3330b, 25 February 2016, Termination Order.

19
20 5 U.S.C. § 1208.15 USERRA Remedies, to compensate for the loss of wages or
21 benefits under 38 U.S.C. 4324©(3). "Military status is a motivating factor if the
22 defendant relied on, took into account, considered, or conditioned its decision on
23 that consideration." *Fink v. City of New York*, 129 F.Supp.2d 511, 520 (E.D.N.Y.
24
25

2001), citing Robinson, 974 F.Supp. at 576. § 1208.25. (the "motivating factor").

See *Robinson v. Morris Moore Chevrolet Buick, Inc.*, 974 F. Supp. 571 (E.D. Tex. 1997). 38 U.S.C. § 4311(c)(1).

4 February 2013 (MSPB -13-0633- exhibit 96), email MM Jim Norris – “I will have Dave Marzec take the steps from here with EAP and medical. One thing I notice ... had 5 point veteran preference. He maintained this veteran’s preference until 2007 and then was no longer considered a 5-point veteran... Perhaps the root of his discontenting attitude at work is he lost being considered a preference veteran...”

For the VEOA and USERRA violations I seek 5 U.S. Code § 3330c - Remedy (a) If the court determines that such violation was willful, it shall award an amount equal to back-pay amount as liquidated damages. “Willful” in 5 U.S.C. § 3330c(a) as meaning that the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by VEOA. *Weed v. Social Security Administration*, 107 M.S.P.R. 142, ¶¶ 6-8 (2007)).

10. I ask for review of my Mixed-Case EEOC Complaints. 29 CFR § 1614.310 Right to file a civil action authorized by 5 U.S.C. 7702 to file a civil action § 1614.310(i), - “After 180 days from the date of filing a petition.”

1 29 August 2013 (exhibit H) I wrote the Seattle EEO Commission asking to
2 combine my EEO complaint with my MSPB for one hearing. 23 September 2013
3 (exhibit H, EEOC Judge Steven Gaffin issued an Order Dismissing my EEOC
4 “Mixed Case” for MSPB Process.” “... Appealable matter to the MSPB include
5 adverse actions as denial of restoration claims, including reduction of work hours,
6 and other ‘whistle blower’ activities. 5 CFR 353.301...” However, the Agency
7 did not process my EEOC mixed-case with my MSPB SF-0752-13-0633-I-1. I
8 Motioned to Consolidate 25 September 2013 (MSPB Doc. 20). I filed a copy of
9 the EEOC Mixed-Case decision, 17 November 2013 (MSPB Doc. 28. MSPB
10 Judge Grace Carter refused to hear my mixed-case claims for the hearing held 7
11 November 2013 and did not issue a decision on their merits. 12 November 201
12 (exhibit H) under 28 U.S.C. §2679(d)(4)(B), I Motioned the EEOC for a hearing
13 for my unheard claims. 9 January 2015 (exhibit H), EEOC Judge Steven Gaffin
14 ordered responses for jurisdiction. However, it has been over 180 days and I have
15 not had a hearing or Final Decision issued. Therefore, I ask the Court’s *de nova*
16 review of my EEO Complaints and a Judicial Decision on the merits:
17
18
19
20
21

22 a. EEOC Complaint No. 1E-985-0004-12, formal filed 21 June 2012, Agency
23 FAD issued 12 February 2013 (exhibit I). 21 Agency created “Specific Issues” for
24 alleged “discriminatory harassment based on Retaliation.” MM Jim Norris EEO
25

1 Investigative Affidavit, 26 September 2012 (exhibit I1 & MSPB -0633 exhibit
2 111), Response, "I have no knowledge of this complaint and was not involved in
3 any way with the issues claimed by the Complainant."
4

5 b. EEOC Complaint No. 1E-985-0006-13, formal filed 2 March 2013,
6 Agency FAD Mixed-Case, 4 November 2013 (exhibit J & MSPB -0633 Agency
7 exhibit 9). 28 Agency created "Statement of Claim[s]" that I did not agree to and
8 are different than the 17 claims I agreed to, 21 February 2013 (exhibit J1).
9

10 NEEOISO Eric Wilson, 7 June 2013 (exhibit J1), - "...If you do not agree with
11 the defined accepted issue(s), you must provide a written response specifying the
12 nature of the disagreement..." NEEOISO Eric Wilson, Response to Objection to
13 Accepted Issues, 16 July 2013 (exhibit J1), - "... regarding your disagreement ...
14 would not alter the agency's investigation of the allegations of discrimination.
15 Therefore, the accepted issues will remain the same."
16
17

18 c. EEOC Complaint, Agency No. 1E-985-0001-14, filed 20 November 2013,
19 FAD dismissal issued, 24 January 2014, (exhibit K). 6 Agency created "Specific
20 Issues" are different than the 12 issues I agreed to, 6 November 2013 (exhibit K1).
21

22 d. EEOC Complaint Agency No. 4E-980-0032-14, filed 14 March 2014,
23 FAD dismissal, 17 April 2014 (exhibit L). 7 Agency created "Specific Issues."
24
25

1 11. I seek review of my EEOC "Spin-Off" complaints. It has been over 180-
2 days and:

3 a. I have not had a decision given on my Class Complaint filed 10 November
4 2012 (exhibit M).
5

6 b. I have not had a decision from the Agency's Judicial Officer, 6 April 2013
7 (exhibit I), for a decision on the jurisdiction (exhibit N) and delegation of
8 authority of the National EEO Investigative Service Office (NEEOISO, located in
9 S.C.) Contractors (retired federal employees, exhibit H2) performing
10 governmental functions and making Final Agency Decisions.
11
12
13
14

15 12. I have exhausted my administrative remedies for the theft of the Union
16 Trust funds. I filed an NLRB complaint, 12 November 2014 (exhibit P) that the
17 U.S. Postal Service violated Section 8(a)(2) and Section 7 rights of Employees by
18 unlawfully dominating the Union by paying the salaries of Union Officers (for not
19 working) for Union activities. This I believe violates the NLRA § 8(a)(2), LMRA
20 § 302, and LMRDA §§ 101, 102, 202, 203, 501 and 609. The dominating
21 Management and the overpaid Union Officials have failed to bargain over working
22 conditions within the meaning of Section 2(5) and making bad faith "sweetheart"
23 deals (contracting, facility closers, loss of jobs) with the Union violating Sections
24
25

1 8(a)(3) and 8(b)(3)..." NLRB Chad Markham, 5 January 2013 (exhibit P), that I
2 had the right, 29 U.S.C. 412, Section 102, to file a civil action for the return of the
3 Trust Funds.

4
5 Fiduciary Responsibility of Officers of Labor Organizations, 29 U.S.C. §
6 501(a), requires that, - "The Officers ... of a labor organization occupy positions
7 of trust ... to hold its money and property solely for the benefit of the organization
8 and its members ... in accordance with its constitution and bylaws..." Individual
9 Union Trust Fund participants have standing to sue under 29 U.S.C. § 1132(a)(1),
10 for the unlawful use of the Union Trust Funds 29 U.S.C. § § 186(c)(6) and 1101
11 through 1114, - *Donohue v. Teamsters Local 282 Trust Funds*, 12 F.Supp.2d 273
12 (1998).
13
14

15 In *Highway Truck Drivers and Helpers Local 107 v. Cohen*, 182 F.Supp. 608
16 (E.D.Pa. 1960), affirmed, 284 F.2d 162 (3d Cir. 1960), denied, 365 U.S. 833, 81
17 S.Ct. 747, 5 L.Ed.2d 744 (1961), a suit was brought under the recently enacted
18 Labor Management Reporting and Disclosure Act (LMRDA) of 1959, Public Law
19 860257, 29 U.S.C.A. 401 et seq. The Court found that the LMRDA established a
20
21 fiduciary responsibility on the part of officers of a labor organization, 501(a) and
22 further provided for a right to sue, 501(b).
23
24
25

1 In *Theresa DONOHUE, Plaintiff, v. Teamsters Local 226 Trust Funds*, 12

2 F.Supp.2d 273 (1998) the plaintiff claimed Union Trust Funds were not operated
3 for the exclusive benefit of the participants and beneficiaries. The Court found
4 standing to bring Racketeer Influenced and Corrupt Organizations Act ("RICO"),
5 18 U.S.C. § 1961, claims under Section 1964(c) of Title 18 that authorizes private
6 actions.
7

8 Bill of Rights, 29 U.S.C. § 411, Section 101(a)(3)(ii) (exhibit P), - "by majority
9 vote of the members in good standing..." § 412, Section 102, - "Any person
10 whose rights secured by the provisions of this title have been infringed by any
11 violation of this title may bring a civil action in a district court..."
12

13
14 *AFL-CIO Codes of Ethical Practice, Minimum Accounting & Financial
15 Controls, D, (exhibit P) page 23, - "...should be regarded as one of the junctions
16 expected to be performed by him in the normal course of his duties and not an
17 extra function requiring further compensation..." page 41, - "Salaries of elected
18 officials should be established only by constitutional provisions..."
19

20
21 GSAL APWU Constitution and By-Laws (exhibit P), Members' Bill of Rights,
22 page v, - "Member shall not be denied the right to ... or the right to vote in this
23 Union..." Section 5, Locals (b), - "...vote of the majority of the members ..."
24
25

1 GSAL APWU Officials have improperly used the vote from a General
2 Membership Meeting (GMM) and not the vote of the “majority of all members” to
3 change the Local Constitution to pay themselves extra salaries (self-enrichment)
4 from the Union Trust Funds.

5
6 The GSAL APWU Officers receive (exhibit P) bi-weekly salaries from the
7 Union Trust funds: President 32 hours, Vice-President 16 hours, Secretary 12.8
8 hours, Treasurer 16 hours, Editor 16 hours, Trustees (each) 6.4 hours, Sergeant-
9 At-Arm 3.2 hours, Mail Processing Clerk Craft Director 32 hours, Customer
10 Services Clerk Craft Director 25.6 hours, Maintenance Craft Director 16 hours,
11 MVS Craft Director 11.2 hours, and Associate Office Representative 16 hours
12 (203.2 total, \$145,000 per year, exhibit P).

13
14
15 Considering that Union Officials also receive hundreds of hours of on-the-clock
16 (Handbook F-21.252) paid for doing their Union Steward work and receive
17 regular over-time paid for by a Federal Agency (public funds).
18
19
20

21 13. Privacy Act violations - 39 CFR 268.2(a), - “The Privacy Act authorizes
22 any individual, whether or not an employee, to bring a civil action...” 5 U.S.C. §
23 552a(g)(1)(B).
24
25

1 a. 29 November 2013 (exhibit Q), I wrote the Seattle HR Manager that I was
2 ready to return to work from my FMLA approved leave without accommodation
3 and with return-to-work documents filled out by my medical provider. I sent a
4 copy of my Desert Strom DD 214 to correct my Official Personnel File (OPF) and
5 give me back my 5-point veteran preference. I also ask that Disciplinary Notices
6 and Decision Letters be removed from my OPF.
7

8
9 11 February 2014 (exhibit Q), HR Manager Alexis Delgado wrote me back –
10 “...management cannot make a proper determination and cannot return you to
11 work...”
12

13 14 February 2014 (exhibit Q) I wrote HR Manager Delgado, - “As a former
14 Personnel Officer I appeal to, a higher level HR Officer with authority to help
15 me...” I pointed out that my OPF’s 1996 Medical Examination performed by an
16 Agency Doctor found me qualified without the need for any accommodation. I
17 again ask that my OPF be corrected.
18

19 3 March 2014 (exhibit Q) and 11 December 2015, I wrote to the Agency’s
20 Record Office, Western Area HRSSC and Seattle District HR that I was ready
21 willing and able to return to work amend my OPF – 39 CFR 266.6. I included a
22 PS Form 8043 Request to Amend Electronic Official Personnel Folder (eOPF) and
23 12 documents that I wanted adding to my OPF.
24
25

1 28 April 2015, MSPB SF-0752-13-13-0633-I-1, Initial Decision (exhibit D),
2 page 8, - "In addition, the following affirmative defenses raised by the appellant
3 were acknowledged: ...The agency violated the ADA by requesting medical
4 information concerning the appellant's impairments..."

5
6 USPS Handbook AS-353, Guide to Privacy, 3-4.2 Requests to Amend
7 Information (b)(1) requires Records Custodians to respond to request to amend
8 records within 10-days and act on the request within 30-days, 1-4.2.6(b)(2).
9

10 39 CFR 266.3(b), - "Custodians are responsible for adherence to this part within
11 their respective units..." (3) "... the custodian will respond ... within ten (10)
12 days."
13

14 39 CFR 266.6(1), - "Inquiries regarding the contents of records systems or
15 access or amendment to personal information should be submitted in writing to the
16 custodian of the official record, if known, or to the Manager, Records Office,
17 USPS, 475 L'Enfant Plaza SW..."
18

19
20 I seek a writ of *mandamus* ordering the Agency to correct my OPF. (See, e.g.
21 *Cheney v. United States Dist. Court For D.C.* (03-475) 542 U.S. 367 (2004) 334
22 F.3d 1096.) 5 U.S.C. § 552a(g)(1)(A).
23

24 39 CFR § 552(g)(1)(C) permits action when the agency fails to properly
25 maintain records that results in adverse determination. *Hewitt v. Grabicki*, 974

1 F.2d 1373, 1379 (9thCir.1986). Applying damages for the adverse effect resulting
2 from the injuries of the [failure] of the record keeping, *Doe v. Chao*, 540 U.S. 614,
3 627, 124 S.Ct. 1204 (2004). § 552a(g)(1)(C) (permits action where agency's
4 failure to maintain proper records results in adverse determination against
5 individual)." 5 U.S.C. § 552a(g)(1)(C), (D).
6

7 Summary

8
9 I had a handicap – genetic birth defect of partial color blindness that never harm
10 myself or others. I reported my handicap on, 24 October 1996, PS Form 2485
11 Medical Examination. An Agency Doctor approve me to work without
12 accommodation. I engaged in numerous protected activities reporting and trying
13 to correct mismanagement's fraud, waste, abuse, and criminal acts that the
14 Agency's Postmaster, Judicial Officer, Postal Inspectors, and numerous Executive
15 Officers knew about and did nothing to correct (exhibit N2, 25 April 2013).
16
17

18 The maintenance staffing at the Kent PMA was reduce from five on day-shift to
19 one (me). Everyday brought my Supervisor SMO Dow harass me saving heavy
20 work to do by myself and I was denied any leave "because of staffing." (Noting
21 that the Agency (MM Norris) has not hired a new Mail Processing Mechanic
22 (MPE) in five years.) So I got FMLA protection for my bad back problem that
23 was being aggravated by the extra heavy work. However, every time I used
24
25

1 FMLA leave SMO Dow would remove tools and equipment that I needed to do
2 my job (easier). December 2012, I complained to MM Norris about the Hostile
3 Work Environment (HWE). MM Norris sent MMO Allen to the PMA to conduct
4 an HWE Initial Management Inquiry Process (IMIP) investigation. I mentioned
5 that I was color blind to MMO Allen. Nothing was done about any of my HWE
6 complaints. However, February 2013, MMO Marzec demanded medical
7 documents to prove my "impairments" did not pose a threat. I complied and took
8 time off (my own leave time) and paid for a doctor visit out of my own pocket
9 (turn in the bill but did not get reimbursed). I sent the medical documents to the
10 Occupational Health Services (OHS). Nurse Daniels created a "Duty Status
11 Form" placing me on light duty with work restrictions and "recommended" that I
12 "volunteer" for accommodation. After passing around my personal medical
13 information. March 2013, MMO Marzec asked me if I wanted reasonable
14 accommodation and I said no – "I don't want to be fired like Brenda Burke." The
15 HWE continued and SMO Dow continued to deny me any requested leave. I got a
16 doctor's note to take stress leave, 1-5 April 2013. While I was on stress leave
17 Management conspired together and SMO Dow file a false Threat Report against
18 me with Inspection Service. When I returned from stress leave I was subject to a
19 without reasonable or probable cause Federal Law Enforcement detention, search
20 and taking of my property. During Law Enforcement (criminal investigation?)
21
22
23
24
25

1 action I told the Inspectors about several criminal actions of Management – loss of
2 postal property. Inspectors said they would look into the crimes. When the
3 Inspectors left, SMO Dow gave the first “notice” that I would be placed on
4 enforced leave if I did not volunteer for accommodation (that would lead to being
5 fired). I did not respond to SMO Dow (blow up from the added stress). I fell
6 silent and stopped talking to SMO Dow thinking that the Inspector would charge
7 SMO Dow for the loss of thousands of dollars of postal property. 8 May 2013,
8 when MMO Marzec gave me the second “notice” with a light duty work
9 restriction (not to work on colored electrical wires – i.e. my job) demanding that I
10 apply for accommodation for my “permanent work restrictions,” I remain silent.
11 However, I sent a copy of the “notice” that I had to take leave for a “serious
12 medical condition” into the HRSSC FMLA Office and received FMLA approval.
13 30 May 2013, when SMO Dow placed me on enforced leave, I remained silent
14 (not blowing up from the stress). While on enforced leave, MMO Norris sent me a
15 “notice” that my start time was changed to 5am starting 29 June 2013. 1 July
16 2013, I started a 5am as the letter stated. However, SMO Dow called the Kent
17 Police and told them I was an “ex-employee.” I showed the Kent Police that I had
18 FMLA return to work, SMO Dow said I could stay and the Kent Police left. SMO
19 Dow then demanded that I “request” accommodation. I refused and SMO Dow
20 again called the Postal Inspectors, falsely charged with trespassing, I was again
21
22
23
24
25

1 subjected to a Federal Law Enforcement detention, search, and ejection from the
2 PMA. I asked the Inspector why they have not conduct the criminal investigation
3 like they said they would and was told that "they" did not have jurisdiction. I
4 September 2013, after receiving from the OHS and HRSSC FMLA return-to-work
5 (RTW) documents filled out by my doctor, with no accommodation needed, I
6 returned to work. However, Inspectors were called and again I was ejected after I
7 showed the Inspectors the RTW documents.
8
9

10 Before the MSPB Hearing started with the help of an Agency Attorney lacking
11 candor, Judge Carter already decided that the Agency had provided "minimum due
12 process" and that I had committed a misdemeanor recording the Kent Police and
13 Inspector's detention and search (trying to protect myself). Judge Carter excluded
14 relevant evidence and determine that I was "untrustworthy." Judge Carter stripped
15 me of my affirmative defenses (disability discrimination) and declared that I did
16 not have FMLA protection. Judge Carter found that the Agency had given me
17 proper "notice" and in awarding me one week of pay out of 9-months of unpaid
18 enforce leave the MSPB found me 97% guilty of "failure to interact" with
19 Management.
20
21
22

23 This "process" would have never happened if I did not have a handicap.
24
25

1 This "process" would have never happened if I had not disclosed my handicap
2 during a protected activity.

3 I plead to be made-whole, back-pay and the return of the over 900-hours of
4 saved leave (my property) unlawfully taken.
5

6 Remedies

7
8 1. Age Discrimination – For the intentional ADEA violations of Title VII
9 injuries I suffered, I ask for liquidated or double damages, equal to the amount of
10 back pay, Part 29 U.S.C.A. §1216(b).
11

12 2. For the intentional handicap/disability discrimination injuries suffered
13 violating the ADA, Title VII, I ask for I ask for back-pay, other make-whole relief
14 and damages equal to the amount of back pay, 42 U.S. Code § 1981a, in addition
15 to any relief authorized by section 706(g) of the Civil Rights Act of 1964.
16

17 3. For the intentional Hostile Work Environment harassment and retaliation
18 injuries suffered caused by Agency Management, the Agency is vicariously liable,
19 *Vance v. Ball State Univ.*, 133 S. Ct. 2434, 2439 (2013). The Agency's Executive,
20 Human Resource, Medical, Law Department, and Law Enforcement Officers
21 (Public Trust Officials) empowered local Management Officials to "take tangible
22 employment actions against" me, *Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158,
23 1173 (9th Cir.2003). For, Manual Model of Jury Instruction 10.2B Civil Rights-
24
25

1 Title VII- Hostile Work Environment Caused by Supervisor, I ask for damages
2 equal to the amount of back -pay.

3
4 4. Whistleblower/No FEAR – Title II Federal Employee Discrimination and
5 Retaliation, Section 201(a) applies with respect to any payment made in
6 accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code,
7 and under section 1304 of title 31, United States Code (relating to judgments) to
8 any Federal employee. Therefore, I ask for damages equal to the amount of back -
9 pay.
10

11
12 5. For the Hatch Act violations (exhibit O):

13 a. I ask the Court to find that the Postal Mailing Discounts for Political
14 Mailings violate the Hatch Act's rule against Government Agency contributing
15 money to political organizations (exhibit O).
16

17 b. I ask the Court to find that the Agency's Employees are violating the
18 Hatch Act by using their official authority and influence to interfere with the
19 election process (exhibit O).
20

21 6. For the willful Family and Medical Leave Act (FMLA), violations and
22 injuries suffered I ask for, Section 825.400(c), - "If an employer has violated one
23 or more of FMLA... an employee may receive one or more ... any actual monetary
24 loss ... An amount equaling the preceding sum may also be awarded as liquidated
25

1 damages...” See 29 U.S.C. § 2617(a), *Ragsdale v. Wolverine World Wide Inc.*, 535
2 U.S. 81, 89 (2002).

3 7. For the willful Fair Labor Standards Act (FLSA) willful violations injuries
4 suffered I ask for payment of the lost wages and an equal amount as liquidated
5 damages, 29 U.S. Code § 216©.

6
7
8 8. MSPB Complaint SF-0752-13-0633-I-1 (exhibits C, D, E, F):

9 a. I ask the Court order the Agency not to use adversarial Federal Attorneys
10 to represent Management and not employees in the non-adversarial judicial
11 processes, EEOC, MSPB, etc.

12
13 b. I ask the Court find that the MSPB made mistakes in its rulings and award
14 me make-whole remedies (i.e. back-pay) or an additional amount equal to back
15 pay.
16

17 9. For my MSPB VEOA and USERRA, SF-3330-15-0432-I-1 (exhibit G),
18 complaints that the agency knew and showed reckless disregard in violating I ask
19 an additional amount equal to back pay. 5 U.S.C. § 3330c.

20
21 10. For the unlawful discrimination detailed in my EEO Complaints: 1E-985-
22 0004-12, 21 June 2012 (exhibit I); 1E-985-0006-13, 2 March 2013 (exhibit J); 1E-
23 985-0001-14, 20 November 2013 (exhibit K); and 4E-980-0032-14, 14 March
24
25

1 2014 (exhibit L), I ask for Supervisor level pay from the time I first complained I
2 was not promoted (exhibit I, "January 2012") and front pay until I retire. I also
3 ask for the maximum \$300,000 allowed for damages for each complaint.

4 *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1196 (9th Cir. 2002) (Title VII
5 damages cap inapplicable to \$ 650,000 award of noneconomic damages under
6 Washington Law Against Discrimination).
7

8
9 11. 11. For my unprocessed and unheard EEO "spin-off" Class Complaint
10 (exhibit H) and Complaint to the Agency's Judicial Officer (exhibit I) , I ask:

11
12 a. The Court order the Agency not to use adversarial Federal Attorneys to
13 represent Management and not employees in the non-adversarial judicial
14 processes, EEOC, MSPB, etc.

15
16 b. I ask the Court to order the closer of the unlawful and unconstitutional
17 tribunals:

18
19 (1) The District Reasonable Accommodation Committees (DRACs).

20
21 (2) The District Threat Assessment Teams (TAT).

22 Doctrine states that Constitutional Jurisdictional questions can be made before,
23 during or after any penal process or tribunal. I clearly challenged the jurisdiction
24 and authority of these Tribunals (NEEOISO, District Reasonable Accommodation
25

1 Committee (DRAC), Threat Assessment Team (TAT)) created by the Agency to
2 bypass constitutional, statutory and collective bargaining agreement rights.

3 The TAT is not legally established by any statute authorized by Congress such
4 as 5 U.S. Code § 7902 - Safety programs - (d) The head of each agency shall
5 develop and support organized safety promotion to reduce accidents and injuries
6 among employees of his agency, encourage safe practices, and eliminate work
7 hazards and health risks.
8
9

10 There is a disputed question of material fact with respect to whether Defendant
11 intentionally discriminated against employees over the age of forty when it
12 designed and implemented the October 15, 1995 RIF. There is also a dispute of
13 material fact with respect to whether the RIF had an impermissible disparate
14 impact on a protected class of employees over the age of forty.
15
16

17 Both the TAT and the DRAC "regulations" are not approved by a majority of the
18 employees being subjected to their "jurisdiction." 5 U.S. Code § 7117 - Duty to
19 bargain in good faith; compelling need; duty to consult (a)(3), - "... less than a
20 majority of the employees in the issuing agency or primary national subdivision,
21 as the case may be, to whom the rule or regulation is applicable." (b)(1), - "In any
22 case of collective bargaining in which an exclusive representative alleges that no
23 compelling need exists for any rule or regulation referred to in subsection..."
24
25

1 c. I ask the Court to consider class injunctive relief and order the closer of
2 National EEO Services Investigation Office (NEEOISO) contractors performing
3 “inherently governmental” work.
4

5 d. I ask the Court to consider class injunctive relief and order the closer of
6 the contracted Human Resource Shared Services Center (HRSSC) contractors
7 performing “inherently governmental” work.
8

9 e. I ask that the Court to order the Agency’s OIG Inspectors to conduct all
10 administrative investigations of employee all misconduct, EEOC, MSPB, HWE,
11 etc.
12

13 f. I ask the Court to strip the Agency given Federal Law Enforcement
14 authority of the administrative OIG Investigators along with strip them of the right
15 to carrying firearms and an un-earned 20-year Law Enforcement Retirement.
16

17 12. Union Trust Funds unlawfully taken for self-enrichment by the Union
18 Fiduciary Officials. RCW 11.98.085
19

20 a. Ask the Court to order the return of the Union Trust Funds unlawfully
21 taken for self-enrichment by the Union Fiduciary Officials. RCW 11.98.085
22
23
24
25

1 b. Ask the Court to reverse the "sweetheart" staffing deals made between
2 Management and the Union to pre-Hostile Work Environment levels (Western
3 Area approved and negotiated with the Union).
4

5 13. For violations of the Privacy Act, Section 3 of the Act, 5 U.S.C. Sec.
6 552a(i) I ask that HR Manager Alexis Delgado (exhibit Q) be fined \$5,000 for:
7

8 a. Knowingly and willfully disclosing individually identifiable (medical)
9 information which is prohibited from such disclosure by the Act and by agency
10 regulations;
11

12 b. Knowingly and willfully requesting or gaining access to a record about an
13 individual under false pretenses.
14

15 c. For not correcting my OPF when requested – duty to act.

16 I also ask that my OPF, Medical Record and Law Enforcement Record be
17 corrected and cleaned of any reference of the unlawful Enforced Leave and Threat
18 Investigations. And, \$10,000 from the Agency for violating my Privacy Act
19 rights.
20

21
22 Respectfully submitted and sworn to this 14th of March 2016,

23 Lance McDermott
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25 Seattle, WA 98168
206 331-1990
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